



The new name for PacTel

August 31, 1994

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: PR File No. 94-SP3; Petition of the People of the State of California
and the Public Utilities Commission of the State of California to Retain
Regulatory Authority Over Intrastate Cellular Service Rates

Dear Mr. Caton:

On Wednesday, August 31, 1994, Brian Kidney and I, on behalf of AirTouch Communications, met with Ralph Haller, David Furth, Julia Kogan and Gina Harrison from the Private Radio Bureau. We discussed the information in the attached material. Please associate this material with the above-referenced proceeding.

Two copies of this notice were submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Q. Abernathy/tlm
Kathleen Q. Abernathy

Attachments

cc: Ralph Haller
Gina Harrison
David Furth
Julia Kogan

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PR 94-105 MB

Kathleen Q. Abernathy
Vice President
Federal Regulatory

AirTouch Communications
1818 N Street N.W.
Washington, DC 20036

Telephone: 202 293-4960
Facsimile: 202 293-4970

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California Cellular Regulation

AirTouch Communications
August 31, 1994

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Regulatory Chronology

1984 CPUC approves LASMSALP CPCN

1988 CPUC opens OII into cellular regulation

1990 CPUC adopts "Interim" Phase I & II Order

- Finds cellular to be discretionary

- Finds cost-based regulation to be inappropriate for cellular

- Permits streamlined "Advice Letter" rate change mechanism

- Reserves 5 issues for next phase

1992 CPUC adopts Phase III Order

- Orders cost-based "unbundling" of cellular rates to interconnect reseller switch

- Adopts wholesale/retail accounting allocation scheme based on fully distributed cost

- Rejects capacity monitoring plan approved in Phase I Order

- Rejects streamlined CPCN process because all carriers have been certificated

1993 CPUC Orders Phase III issues reheard

- Requires review of economic foundation for unbundling

- Rejects accounting scheme as unnecessary

1993 CPUC opens new OII

Historical Cellular Regulation

- In 1983, the CPUC decided that cellular carriers required a CPCN to operate in California.
- As required under California Code all utility rates must be approved by the Commission, which must ensure that they are just and reasonable.
- The first cellular rates were established for AirTouch's Los Angeles system (LASMSALP), based on initial projections of capital requirements and other expenses, along with subscribership and usage.
 - Explicit cost-based-pricing was not contemplated.
 - The CPUC required LASMSALP to offer wholesale rates to resellers with a prescribed margin discount from its retail rates.
 - Other system CPCN's copied the formula established for LASMSALP.
- Based on carrier competition and discretionary service , new rate plans and current rate changes were permitted to use a streamlined Advice Letter process.
 - There is no reliable criteria for rate changes, nor for the introduction of new plans: what is approved for one carrier may not be "just and reasonable" for the competitor in the same market.
- In 1993, the CPUC created "rate bands" by permitting carriers to reduce rates, and subsequently raise them back up to the previous level on one day's notice. However, reseller margins must track retail price movement, and 60 days' notice provided when rates are raised.

The CPUC's New Interim Order and Petition

- The CPUC requests continued authority to regulate cellular for 18 months after September 1, 1994
- The CPUC's primary rationale is that, despite its best regulatory efforts, prices in California are higher than elsewhere, and carriers are making unwarranted profits
 - The CPUC takes no responsibility for its failures, and provides no plan to suggest any different result in the future
 - While cellular carriers challenge the CPUC's presumptions, we agree that regulation so far has been a monumental failure
- The CPUC states that it will continue current "rate cap" regulation, but plans further proceedings to evaluate possible changes to its regulatory scheme
- The CPUC authorized resellers to interconnect a switch into the cellular carriers' networks
 - Technical issues raised by carriers were rejected, even though no detailed plan has been presented by resellers
 - "Unbundled" pricing is described as "market-based", but no details are provided
- Among wireless carriers, only cellular is to have rate and facilities regulation, including "unbundling"

Cellular Rates, Earnings, and Capacity

- Cellular rates in large California markets are higher than in many other areas in the U.S.
 - Economists have found that cellular rates in regulated states are generally 5-15% higher than rates in unregulated states
 - Because California is the only state that prohibits packaging of service and equipment, prices for equipment are higher than anywhere in the nation
 - The CPUC ignores discount plans, because they require commitments from customers, which makes them hard to evaluate
 - Customers have no trouble evaluating such plans--in large AirTouch markets, over 60% of customers subscribe to discount plans
- The CPUC focuses on two markets for its evaluation of earnings, Los Angeles and San Francisco
 - The CPUC acknowledges that carriers in "rural" areas have lower returns, but ignores them for their evaluation
 - The CPUC mentions risk, but makes no attempt to evaluate such risk, nor the impact of new competitors on this earnings capability
 - The CPUC fails to describe the significant capital investment by carriers, and the impact of conversion to digital technology required to increase capacity
- The CPUC's "Capacity Utilization" evaluation demonstrated their lack of understanding of cellular
 - Systems are engineered to peak capacity, which occurs only at discrete times, to handle the maximum traffic
 - Usage on any system is not geographically uniform, but pricing is. The CPUC's approach would suggest that pricing could be established discretely by cell site and time of day, and that customers would price discriminate and use up spare capacity. Surely if the CPUC can't evaluate whether discount plans are beneficial to customers, it is incapable of orchestrating cell site specific pricing.

The CPUC Petition

- The CPUC's petition for continued regulatory authority does not satisfy its required burden of proof
 - The CPUC failed to distinguish circumstances in California from those elsewhere in the nation, which both the Congress and this Commission have declared to not require cellular rate regulation
 - The CPUC did not describe in detail its plans for regulation, as required
 - The CPUC outlined many problems with cellular during their active ten year regulatory tenure, but offers no specific plans to rectify their past mistakes
 - The CPUC does plan to implement discriminatory dominant/non-dominant regulation contrary to the "regulatory parity" precept of the 1993 Budget Reconciliation Act
 - The CPUC has changed its regulation after June 1993, which is not permitted by statute
 - The CPUC has authorized "unbundling" which is preempted